

In the Matter of)
)
Regulation of Prepaid Calling Card Services) WC Docket No. 05-68

**COMMENTS OF QWEST SERVICES CORPORATION
ON AT&T EMERGENCY PETITION FOR IMMEDIATE INTERIM RELIEF**

Qwest Services Corporation (“Qwest”) hereby files these comments on the Emergency Petition for Immediate Interim Relief (“Emergency Petition”) filed by AT&T Corp. (“AT&T”) on May 3, 2005.¹

AT&T's Emergency Petition asks that the Federal Communications Commission ("Commission") establish "interim" rules to the effect that carriers which use prepaid calling cards for billing services must make appropriate contributions to the Universal Service funding mechanisms ("USF"). AT&T also requests that the Commission issue an "interim" rule that would remove intrastate calls that are made using a prepaid calling card from the jurisdiction of state regulators, with the result that the carriers providing these services would pay interstate access charges (rather than intrastate).

The predicate of the Emergency Petition is AT&T's claim that it was surprised when the Commission, acting consistent with a mountain of precedent stretching back over two decades, ruled that AT&T's "scam"² to avoid paying appropriate universal service and access charges

¹ Qwest files these Comments pursuant to Section 1.45(b). 47 C.F.R. § 1.45(b).

² See Statement of (former) Chairman Michael K. Powell, as attached to Order and Notice of Proposed Rulemaking, *In the Matter of AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services; Regulation of Prepaid Calling Card Services*, WC Docket Nos. 03-133 and 05-68, 20 FCC Rcd 4826 (2005) (“*Prepaid Calling Card Order*”).

would not be tolerated. AT&T's argument that forcing a customer making a long distance call to listen to a commercial message (or, in a number of cases, an AT&T request that the caller call the Commission and complain about the possibility of universal service contributions) as a prerequisite to making a long distance call is, and always has been, frivolous.³ While AT&T's claim that it has acted in good faith will undoubtedly be tested in litigation,⁴ the bottom line is that there is no basis in law for AT&T or anyone else to refuse to make universal service contributions or to avoid paying proper access charges on such a flimsy pretext. The Commission, in the *Prepaid Calling Card Order*,⁵ decisively rejected AT&T's arguments, ordered AT&T to take immediate steps to rectify its universal service underpayments, and allowed for considerable simplification of lawsuits brought by injured local exchange carriers to recover access charge underpayments. The Commission ordered all other carriers that were similarly "scamming" the universal service fund to likewise take immediate steps to pay the proper amounts. In doing so, the Commission summarily rejected AT&T's claim that it was excused from paying the proper charges because other scofflaws were behaving equally badly.⁶

AT&T now returns, and it tries to reinforce its "everyone does it" excuse. Specifically, AT&T accuses a company called IDT of massive fraud in the area of access charges. AT&T similarly charges MCI, Sprint and Verizon with access charge avoidance on their prepaid calling

³ As Qwest has pointed out, even if AT&T were correct that its prepaid calling card service plus commercial constituted an information service, this would still not relieve AT&T, as a facilities-based carrier, from making the appropriate universal service and access charge payments. See *Opposition of Qwest to AT&T Motion for Stay Pending Appeal*, WC Docket No. 03-133, Apr. 4, 2005, at 3-4, 8-13.

⁴ See *Qwest Corporation v. AT&T Corp., et al.*, Civil Action No. 05-RB-375 (BNB), Complaint and Jury Demand (D. Colo. Feb. 28, 2005).

⁵ *Prepaid Calling Card Order*, 20 FCC Rcd. 4826 at ¶ 28 and n.58, ¶¶ 30-33.

⁶ *Id.* at ¶ 32 and n.67, ¶ 37.

card services, including claims that these companies are routing calls “through foreign countries such as Japan and Chile and delivering that traffic for termination as if it were international traffic, without the originating CPN that would allow the calls to be identified as intrastate by the terminating carriers.”⁷ AT&T claims that the fact that it has uncovered other miscreants demonstrates that the law on access charges and USF contributions is somehow unclear. Accordingly, AT&T requests that the Commission should immediately issue “interim rules” announcing that providers of prepaid calling card services should comply with the law and make their universal service payments as the law requires. In essence, these “interim rules” would amount to little more than a declaration that the Commission is serious when it says that all entities subject to its jurisdiction should comply with the law.

AT&T also requests adoption of “interim rules” preempting state jurisdiction over intrastate access charges assessed on calls made between two end points within a single state. This, of course, would substantially alter the Commission’s long-standing end-to-end analysis on the jurisdiction of prepaid calling card calls, and would effectively reverse part of the Commission’s recent *Prepaid Calling Card Order*.⁸

AT&T’s Emergency Petition is frivolous, as are the legal positions that AT&T takes within it. First, there is no conceivable reason why the Commission needs to issue rules reminding carriers of their obligation to abide by the law and to make the proper access charge and USF payments. If any other carriers have been operating under the same illegal scheme as

⁷ Emergency Petition at 5 (citation omitted).

⁸ See *Prepaid Calling Card Order* at ¶¶ 22-25; see also *In the Matter of The Time Machine, Inc. Request for a Declaratory Ruling Concerning Preemption of State Regulation of Interstate 800-Access Debit Card Telecommunications Services*, Memorandum Opinion and Order, 11 FCC Rcd 1186, 1190 (1995) (rejecting AT&T’s claim that 800-access debit card service is “inherently interstate” in nature, and rejecting AT&T’s claim that routing an intrastate debit card call through an out-of-state switch renders the call “jurisdictionally interstate in nature”).

AT&T, and have similarly been avoiding payment of universal service or access charge obligations, the Commission has now told them in no uncertain terms that such conduct will not be tolerated, and has directed them to immediately amend their FCC Forms 499A (which they presumably have already done).⁹ Such a warning should not have been necessary in the first place. It certainly does not need to be done through an “interim rule” now.

Second, the notion that the Commission would want to issue “interim rules” preempting state jurisdiction over intrastate services while it conducts a rulemaking is equally ludicrous. Even if AT&T’s position that prepaid calling card calls should be subject to intrastate jurisdiction no matter what the end points of the call were to be ultimately accepted, state authority over intrastate calls is far too serious a matter than could be dealt with intelligibly on the basis of AT&T’s Emergency Petition.

Finally, Qwest has already initiated legal action against AT&T for its wrongful actions. While Qwest appreciates AT&T’s assistance in uncovering other potential defendants in this litigation, Qwest certainly is not in need of additional assistance from “interim rules” on either jurisdiction or universal service.

⁹ *Prepaid Calling Card Order*, 20 FCC Rcd. 4826 at ¶ 31.

The AT&T Emergency Petition presents nothing of substance. It should be summarily denied.

Respectfully submitted,

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May 13, 2005

CERTIFICATE OF SERVICE

I, Ross Dino, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST SERVICES CORPORATION ON AT&T EMERGENCY PETITION FOR IMMEDIATE INTERIM RELIEF** to be 1) filed with the FCC via its Electronic Comment Filing System, 2) served, via email on Tamara.Preiss@fcc.gov of the Wireline Competition Bureau, 3) served, via email on the FCC's duplicating contractor fcc@bcpiweb.com and 4) served, via first class United States Mail, postage prepaid, on the parties listed on the attached service list.

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